

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LARRY RICHARDS, #1503956 §

VS. § CIVIL ACTION NO. 6:10cv411

DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

The above-entitled and numbered petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 was heretofore referred to United States Magistrate Judge John D. Love. The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Petitioner has filed objections.

Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Specifically, Petitioner's entire objection is contained in a scant, single paragraph reasserting his claim of ineffective assistance of counsel for failure to interview his wife as a potential character witness. However, he offers no argument regarding any of the bases presented in the Magistrate Judge's Report recommending dismissal of the petition. Accordingly, the objections will be overruled.

Concurrently with the objections, Petitioner also filed a Motion for Evidentiary Hearing (docket entry #23) and a Motion Requesting Appointment of Counsel (docket entry #22). First addressing the request for an evidentiary hearing, Petitioner desires the hearing "so that crucial [sic] facts that were not developed at the trial level can be obtained and discovered." Motion at 1.

However, the federal court is limited to reviewing the materials presented during the state proceedings. *Cullen v. Pinholster*, - - - U.S. - - - , 131 S. Ct. 1388, 1398, 179 L. Ed. 2d 557 (2011); *Higgins v. Cain*, - - - F.3d - - - , 2013 WL 3013866, at *3 (5th Cir. June 18, 2013). Accordingly, newly developed evidence cannot be considered by a federal court in habeas review of a state trial court proceeding. Thus, Petitioner's request for an evidentiary hearing will be denied. Finally, the rule governing the appointment of counsel in § 2254 habeas corpus proceedings is Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts. The rule provides that the presiding judge shall appoint counsel for a petitioner if an evidentiary hearing is required and the petitioner qualifies for appointment of counsel under 18 U.S.C. § 3006A(g). The Court has determined that no evidentiary hearing is necessary in this case; accordingly, the motion for appointment of counsel will be denied.

It is therefore

ORDERED that Petitioner's Objections (docket entry #24) are **OVERRULED** and his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** and the case is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that a certificate of appealability is **DENIED**. It is finally

ORDERED all motions by either party not previously ruled on, and specifically Petitioner's Motions for an Evidentiary Hearing (docket entry #23) and for Appointment of Counsel (docket entry #22) are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 5th day of August, 2013.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE